

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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TORI STATON,

Plaintiff,

**ANSWER OF DEFENDANT
CITY OF NEW YORK**

-against-

08 Civ 4423 (RJS)

THE CITY OF NEW YORK, and P.O.s JOHN and JANE
DOES #1-10,

JURY TRIAL DEMANDED

Defendants.
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Defendants the City of New York ("City"), by its attorney, Michael A. Cardozo, Corporation Counsel of the City of New York, as and for an answer to plaintiff's Complaint ("Complaint"), respectfully allege, upon information and belief, as follows:

1. Denies the allegations set forth in paragraph "1" of the Complaint, except admit that plaintiff purports to proceed as stated therein.
2. Denies the allegations set forth in paragraph "2" of the Complaint, except admit that plaintiff purports to invoke the jurisdiction of this Court as stated therein.
3. Denies the allegations set forth in paragraph "3" of the Complaint, except admit that plaintiff purports to invoke the jurisdiction of this Court as stated therein.
4. Denies the allegations set forth in paragraph "4" of the Complaint, except admit that plaintiff purports to lay venue as stated therein.
5. Denies the allegations set forth in paragraph "5" of the Complaint, except admit that plaintiff purports to proceed as stated therein.
6. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "6" of the Complaint.

7. Admits the allegations set forth in paragraph “7” of the Complaint.

8. Denies the allegations set forth in paragraph “8” of the Complaint, except admit that the City of New York is a municipal corporation organized under the laws of the State of New York and that it maintains the New York City Police Department and respectfully refer the Court to the New York City Charter and Administrative Code for the relationship between defendant City and the New York City Police Department.

9. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “9” of the Complaint.

10. Paragraph “10” of the Complaint contains conclusions of law to which no response is required.

11. Denies the allegations contained in paragraph “11” of the Complaint.

12. Denies the allegations contained in paragraph “12” of the Complaint.

13. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “13” of the Complaint.

14. Denies the allegations contained in paragraph “14” of the Complaint.

15. Denies the allegations contained in paragraph “15” of the Complaint.

16. Denies that there was an “unprovoked assault,” otherwise denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “16” of the Complaint.

17. Admits that plaintiff was arrested, otherwise denies the allegations contained in paragraph “17” of the Complaint.

18. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “18” of the Complaint.

19. Denies the allegations contained in paragraph "19" of the Complaint.

20. Denies the allegations contained in paragraph "20" of the Complaint.

21. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "21" of the Complaint.

22. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "21" of the Complaint.

23. Denies the allegations contained in paragraph "23" of the Complaint.

24. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "24" of the Complaint.

25. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "25" of the Complaint.

26. Denies the allegations contained in paragraph "26" of the Complaint.

27. In response to the allegations set forth in paragraph "27" of the Complaint, defendant repeats and realleges each and every of its responses to the preceding paragraphs of the Complaint as if fully set forth herein.

28. Denies the allegations contained in paragraph "28" of the Complaint.

29. Denies the allegations contained in paragraph "29" of the Complaint.

30. Denies the allegations contained in paragraph "30" of the Complaint.

31. Denies the allegations contained in paragraph "31" of the Complaint.

32. Denies the allegations contained in paragraph "32" of the Complaint.

33. In response to the allegations set forth in paragraph "33" of the Complaint, defendant repeats and realleges each and every of its responses to the preceding paragraphs of the Complaint as if fully set forth herein.

34. Denies the allegations contained in paragraph “34” of the Complaint.

35. Denies the allegations contained in paragraph “35” of the Complaint.

36. In response to the allegations set forth in paragraph “36” of the Complaint, defendant repeats and realleges each and every of its responses to the preceding paragraphs of the Complaint as if fully set forth herein.

37. Denies the allegations contained in paragraph “37” of the Complaint.

38. Denies the allegations contained in paragraph “38” of the Complaint.

39. In response to the allegations set forth in paragraph “39” of the Complaint, defendant repeats and realleges each and every of its responses to the preceding paragraphs of the Complaint as if fully set forth herein.

40. Denies the allegations contained in paragraph “40” of the Complaint.

41. Denies the allegations contained in paragraph “41” of the Complaint.

42. Denies the allegations contained in paragraph “42” of the Complaint.

43. Denies the allegations contained in paragraph “43” of the Complaint.

44. Denies the allegations contained in paragraph “44” of the Complaint.

45. Denies the allegations contained in paragraph “45” of the Complaint.

46. Denies the allegations contained in paragraph “46” of the Complaint.

47. Denies the allegations contained in paragraph “47” of the Complaint.

48. Denies the allegations contained in paragraph “48” of the Complaint.

49. Denies the allegations contained in paragraph “49” of the Complaint.

50. Denies any “perjurious and fraudulent conduct of defendants,” otherwise denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “50” of the Complaint.

51. In response to the allegations set forth in paragraph “51” of the Complaint, defendant repeats and realleges each and every of its responses to the preceding paragraphs of the Complaint as if fully set forth herein.

52. Admit the allegations contained in paragraph “52” of the Complaint.

53. Denies the allegations contained in paragraph “53” of the Complaint.

54. Denies the allegations contained in paragraph “54” of the Complaint.

55. In response to the allegations set forth in paragraph “55” of the Complaint, defendant repeats and realleges each and every of its responses to the preceding paragraphs of the Complaint as if fully set forth herein.

56. Paragraph “56” of the Complaint contains legal conclusions to which no response is required.

57. Denies the allegations contained in paragraph “57” of the Complaint.

58. Denies the allegations contained in paragraph “58” of the Complaint.

59. In response to the allegations set forth in paragraph “59” of the Complaint, defendant repeats and realleges each and every of its responses to the preceding paragraphs of the Complaint as if fully set forth herein.

60. Denies the allegations contained in paragraph “60” of the Complaint.

61. Denies the allegations contained in paragraph “61” of the Complaint.

62. Denies the allegations contained in paragraph “62” of the Complaint.

63. Denies the allegations contained in paragraph “63” of the Complaint.

64. In response to the allegations set forth in paragraph “64” of the Complaint, defendant repeats and realleges each and every of its responses to the preceding paragraphs of the Complaint as if fully set forth herein.

65. Denies the allegations contained in paragraph “65” of the Complaint.

66. Denies the allegations contained in paragraph “66” of the Complaint.

67. Denies the allegations contained in paragraph “67” of the Complaint.

68. Denies the allegations contained in paragraph “68” of the Complaint.

69. Denies the allegations contained in paragraph “69” of the Complaint.

70. Denies the allegations contained in paragraph “70” of the Complaint.

71. Denies the allegations contained in paragraph “71” of the Complaint.

72. Denies the allegations contained in paragraph “72” of the Complaint.

73. Denies the allegations contained in paragraph “73” of the Complaint.

74. Denies the allegations contained in paragraph “74” of the Complaint.

75. In response to the allegations set forth in paragraph “75” of the Complaint, defendant repeats and realleges each and every of its responses to the preceding paragraphs of the Complaint as if fully set forth herein.

76. Admits that plaintiff filed what purports to be a Notice of Claim on or about November 21, 2007, otherwise denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “76” of the Complaint.

77. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “77” of the Complaint.

78. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “78” of the Complaint.

79. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “79” of the Complaint.

80. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “80” of the Complaint.

81. Paragraph “81” of the Complaint contains conclusions of law to which no response is required.

82. Paragraph “82” of the Complaint contains conclusions of law to which no response is required.

83. Paragraph “83” of the Complaint contains conclusions of law to which no response is required.

84. In response to the allegations set forth in paragraph “84” of the Complaint, defendant repeats and realleges each and every of its responses to the preceding paragraphs of the Complaint as if fully set forth herein.

85. Denies the allegations set forth in paragraph “85” of the Complaint.

86. Denies the allegations set forth in paragraph “86” of the Complaint.

87. Denies the allegations set forth in paragraph “87” of the Complaint.

88. In response to the allegations set forth in paragraph “88” of the Complaint, defendant repeats and realleges each and every of its responses to the preceding paragraphs of the Complaint as if fully set forth herein.

89. Denies the allegations set forth in paragraph “89” of the Complaint.

90. Denies the allegations set forth in paragraph “90” of the Complaint.

91. Denies the allegations set forth in paragraph “91” of the Complaint.

92. Denies the allegations set forth in paragraph “92” of the Complaint.

93. In response to the allegations set forth in paragraph “93” of the Complaint, defendant repeats and realleges each and every of its responses to the preceding paragraphs of the Complaint as if fully set forth herein.

94. Denies the allegations set forth in paragraph “94” of the Complaint.

95. Denies the allegations set forth in paragraph “95” of the Complaint.

96. In response to the allegations set forth in paragraph “96” of the Complaint, defendant repeats and realleges each and every of its responses to the preceding paragraphs of the Complaint as if fully set forth herein.

97. Denies the allegations set forth in paragraph “97” of the Complaint.

98. Denies the allegations set forth in paragraph “98” of the Complaint.

99. Denies the allegations set forth in paragraph “99” of the Complaint.

100. In response to the allegations set forth in paragraph “100” of the Complaint, defendant repeats and realleges each and every of its responses to the preceding paragraphs of the Complaint as if fully set forth herein.

101. Denies the allegations contained in paragraph “101” of the Complaint.

102. Denies the allegations set forth in paragraph “102” of the Complaint.

103. Admits that plaintiff was prosecuted, otherwise denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “103” of the Complaint.

104. Denies the allegations set forth in paragraph “104” of the Complaint.

105. Denies the allegations set forth in paragraph “105” of the Complaint.

106. Denies the allegations set forth in paragraph “106” of the Complaint.

107. Denies the allegations set forth in paragraph “107” of the Complaint.

108. Denies the allegations set forth in paragraph “108” of the Complaint.

109. Denies the allegations set forth in paragraph “109” of the Complaint.

110. Denies the allegations set forth in paragraph “110” of the Complaint.

111. Denies the allegations set forth in paragraph “111” of the Complaint.

112. Denies the allegations set forth in paragraph “112” of the Complaint.

113. In response to the allegations set forth in paragraph “113” of the Complaint, defendant repeats and realleges each and every of its responses to the preceding paragraphs of the Complaint as if fully set forth herein.

114. Paragraph “114” of the Complaint contains conclusions of law to which no response is required.

115. Denies the allegations set forth in paragraph “115” of the Complaint.

116. Denies the allegations set forth in paragraph “116” of the Complaint.

117. Denies the allegations set forth in paragraph “117” of the Complaint.

118. In response to the allegations set forth in paragraph “118” of the Complaint, defendant repeats and realleges each and every of its responses to the preceding paragraphs of the Complaint as if fully set forth herein.

119. Denies the allegations set forth in paragraph “119” of the Complaint.

120. Denies the allegations set forth in paragraph “120” of the Complaint.

121. Denies the allegations set forth in paragraph “121” of the Complaint.

122. Denies the allegations set forth in paragraph “122” of the Complaint.

123. Denies the allegations set forth in paragraph “123” of the Complaint.

124. In response to the allegations set forth in paragraph “124” of the Complaint, defendant repeats and realleges each and every of its responses to the preceding paragraphs of the Complaint as if fully set forth herein.

125. Denies the allegations set forth in paragraph “125” of the Complaint.

126. Denies the allegations set forth in paragraph “126” of the Complaint.

127. In response to the allegations set forth in paragraph “127” of the Complaint, defendant repeats and realleges each and every of its responses to the preceding paragraphs of the Complaint as if fully set forth herein.

128. Denies the allegations set forth in paragraph “128” of the Complaint.

129. Denies the allegations set forth in paragraph “129” of the Complaint.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE:

130. The Complaint fails, in whole or in part, to state a claim upon which relief can be granted.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE:

131. Defendant City of New York has not violated any rights, privileges or immunities under the Constitution or laws of the United States or the State of New York or any political subdivision thereof, nor has the defendant City of New York violated any act of Congress for providing for the protection of civil rights.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

132. At all times relevant to the acts alleged in the Complaint, the duties and functions of the municipal defendant’s officials entailed the reasonable exercise of proper and lawful discretion. Therefore, defendant City of New York is entitled to governmental immunity.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE:

133. Any injury alleged to have been sustained resulted from plaintiff's own culpable or negligent conduct and was not the proximate result of any act of the defendant.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE:

134. There was probable cause for plaintiff's arrest.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE:

135. Plaintiff's claims are barred, in whole or in part, by the applicable statute of limitations.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE:

136. Plaintiff has failed to comply with all conditions precedent to suit.

AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE

137. Punitive damages may not be awarded against defendant City of New York.

WHEREFORE, defendant City of New York requests judgment dismissing the Complaint in its entirety, together with the costs and disbursements of this action and such other and further relief as the Court may deem just and proper.

Dated: New York, New York
July 31, 2008

MICHAEL A. CARDOZO
Corporation Counsel of the
City of New York
Attorney for Defendant City of New York
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(212) 788-0786

By: _____/s/
Michael K. Gertz

TO: Rose M. Weber, Esq. (By ECF)